

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Heather Odden,)	
)	
Petitioner and Appellee,)	
)	Supreme Court No. 20060170
vs.)	
)	Burleigh Co. No. 05-R-00121
Mark Rath,)	
)	
Respondent and Appellant.)	

Appeal from the Order for Extension
of Domestic Violence Protection Order
dated April 6, 2006
Burleigh County District Court,
South Central Judicial District,
Honorable Thomas J. Schneider

Brief of Appellant

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Statement of Issue

3

Did the trial court abuse its discretion by extending the domestic violence protection order?

4

Statement of Case

5 This is an appeal of the Order for Extension of Domestic Violence Protection Order
entered on April 6, 2006.

6 Heather Odden obtained the original Domestic Violence Protection Order on 4/15/05.
(Record on Appeal).

7 On 3/21/06, Odden moved the court for renewal of the order. (Appendix 2-3).

8 The hearing on Odden's motion was held on April 4, 2006. The trial court granted
Odden's motion and extended the order two years until 4/15/08. (Appendix 5-6).

9 Mark Rath filed his Notice of Appeal on June 7, 2006.

11 On March 21, 2006, Odden moved to renew her domestic violence protection order on the basis that “[She] still believe[s] that [she] is in immediate and present danger of abuse.” (Appendix 2).

12 Odden’s affidavit supporting her motion to renew the domestic violence protection order alleged that “. . . I still feel that he is a threat to me and my son. He has violated the protection order by email and continues to talk obsessively about me on his website. Do to current custody battle I would feel much safer if the order is still in effect.”

13 At the hearing on the motion, Odden testified that she received the email on August 10, 2005. (Transcript [hereinafter “T”] 7, ls. 4-9). The email was entered into evidence as Exhibit 1. (Record on Appeal). Odden initially stated she was not sure if Rath sent the email or a company. (T7, ls. 7-8). On cross examination, she was aware that it was an automatically generated invite sent by a company because she was still on one of Rath’s email lists. (T17-18, ls. 23-15).

14 Rath confirmed that he did not send the email and that it was generated by a website he had joined that was given access to his address book. (T22-23, ls. 11-9). There were one to two hundred addresses in his address book and he had forgotten that Odden’s email address was in it. Id. Rath was unaware that the invite had been sent to Odden approximately 6 months earlier until she submitted it as evidence. Id.

15 Odden testified on direct examination that other than the invite sent by the company, Rath had obeyed the protection order. (T7, ls. 4-9).

16 Odden complained that Rath had placed pictures of the parties’ child on Rath’s website. (T9-10, ls. 5-11). She offered no testimony to explain how this was related to her

request to renew her protection order.

17 Odden also complained that Rath discussed with others on his website his custody case with Odden and the parties' child. (T8, ls. 1-23). Odden offered as Exhibit 2 materials from Rath's website, including poetry. (Record on Appeal). Odden was never invited to Rath's website. (T19-20, ls. 19-4). Once Rath knew she was looking at his website, he blocked her from viewing it. (T20, ls. 5-8).

18 Odden admitted that from all of the information she viewed on the website, there was no threat from Mr. Rath to her. (T20, ls. 9-16). She also admitted that there was no threat toward her from the poetry she admitted as evidence. (T21, ls. 3-13).

19 Despite the fact that there had been no threats toward and no violations of the protection order, the trial court extended the order two years. (Appendix 5-6).

21 Did the trial court abuse its discretion by extending the domestic violence protection order?

22 With respect to domestic violence protection orders, a “court may amend its order or agreement at any time upon subsequent petition filed by either party.” NDCC § 14-07.1-02(6) (2006). This provision provides the trial court with the means to extend an order. Frisk v. Frisk, 2006 ND 163 ¶ 8, 719 N.W.2d 332; Gaab v. Ochsner, 2001 ND 195 ¶ 5, 636 N.W.2d 669

23 “A trial court’s decision to extend an existing protection order is reviewed under an abuse of discretion standard.” Gaab, 2001 ND 195 at ¶ 6. “A trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner or when it misinterprets or misapplies the law.” Id.

24 A petitioner does not need to show actual or imminent domestic violence in order to succeed on a motion to extend an order. Gaab, 2001 ND 195 at ¶ 5. However, implicit in this Court’s decision concerning the extension of such orders is a requirement for additional facts justifying the extension. Gaab, 2001 ND 195 at ¶ 5-7 (noting the Minnesota Domestic Abuse Act requires a showing of a violation, reasonable fear of physical harm, or acts of harassment or stalking to extend an order, and finding the respondent had violated the existing order).

25 ____ Further, a person “could have his or her liberty interest impinged on a reoccurring basis” if a party were allowed to repeatedly extend protection orders against an individual without showing a basis for doing so. Frisk v. Frisk, 2005 ND 154 ¶ 10, 703 N.W.2d 341 (discussing extending protection orders when there was no original finding of an actual or

Certificate of Service

Loren McCray certifies that on the 5th day of September, 2006, he served the following document:

1. Brief of Appellant

upon: Anne Summers
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in the following manner:

- ☐ by handing a true and correct copy to the attorney personally.
- ☐ by leaving a true and correct copy at the office of the attorney with a clerk or other individual in charge thereof.
- ☐ by leaving a true and correct copy at the office of the attorney in a conspicuous place therein.
- ☐ by placing a true and correct copy thereof in an envelope so addressed and depositing the same, with postage prepaid, in the United State mail at Bismarck, North Dakota.
- ☐ by facsimile transmission to the attorney at the facsimile number at m. (CT).
- ☐ electronically by electronically filing the same with the United States Bankruptcy Court, District of North Dakota.
- ☒ electronically by emailing the same to ladystar@gcentral.com by 11:50 a.m. (CT.)

and the following document:

2. Appendix of Appellant:

- ☐ by facsimile transmission to the attorney at the facsimile number 701-223-4889 at 11:50 p.m. (CT).

/S/ Loren McCray
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